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Creating an Islamic Compliant Trust: A Guide for South Carolina Muslim Residents

In the Name of Allah, Most Gracious, Most Merciful.

CREATING A TRUST:

A trust is a fiduciary relationship with respect to property where by a trustee holds legal title for the benefit of another. The Islamic waqf system in many ways resembles a trust in that it is based on the idea of someone gifting to a third party specific property to be held for the benefit of others. A trust is ideal if one does not want to have a conservatorship proceeding wherein one's family will have to go to court if they disagree.

A South Carolina Last Will and Testament can enable one to create a trust and designate a trustee to handle their estate (property left after death) on behalf of their children or other

beneficiaries. A trust, particularly a discretionary trust, enables one to collect, arrange, and manage their assets during their lifetime. The assets then pass to one's beneficiaries upon their death. A trust achieves many of the same ends as a Last Will and Testament; however, a trust serves as a tax-saving device which enables one to avoid excessive estate expenses. If one's Last Will and Testament is used to transfer property after their death, there will be a probate. However, trusts are not required to go through probate, which can save one a small percentage of the total value of their estate.

Title 62 - South Carolina Probate Code SECTION 62-6-101. Definitions. (14) mandates: "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account; it is not essential that payment to the beneficiary be mentioned in the deposit agreement. **A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relationship such as attorney-client.**

It is therefore important to highlight that a trust account does not include a regular trust account under a testamentary trust (will trust) or a trust agreement. A testamentary trust is a trust that is not created until after a testator's death, and is therefore irrevocable; because, since the testator has died, it will be physically impossible for them to have the ability to amend or revoke the testamentary trust. A testamentary trust can be established under one's Last Will and Testament, Revocable Living Trust, or Irrevocable Life Insurance Trust.

There are four parties involved in a testamentary trust:

- The one (grantor or trustor, but is generally referred to as the settlor) who stipulates that the trust be formed, generally as a part of their will
- The trustee (or Executor), who is generally named in the will, is responsible for carrying out the terms of the testator's Last Will and Testament. If not named in the will, they will be appointed by the probate court which handles the will
- The beneficiary(s) who will receive the benefits of the trust in question
- The actual trust itself

STRUCTURING A TRUST:

It is imperative that a Muslim living in South Carolina consider the practical Islamic guidelines with regard to how the trust is actually structured. In theory, there are various ways one can structure a trust to achieve the underlying objective while also remaining shariah compliant.

Wali (guardian) of the trust

The Settlor can appoint one they consider an ideal wali, whose authority should be held in a fiduciary capacity while acting as the protector of the trust. This individual should essentially ensure that all activities of the trust are in compliance with Islamic law. Furthermore, in order to ensure that the Trustees observe the requirements of both Islamic and state law while administering the trust, the settlor should prepare a letter of wishes. However, it is important to note that as a matter of practicality, where the trust is administered from an abroad jurisdiction this option may be inconvenient in practice.

SAMPLE LETTER OF WISHES

To: My Executors, My Family and My Beneficiaries and Any Other Person Whom It May Concern:

I, (name), of (address), wish to state my wishes with respect to certain items of sentimental value, my gifts to charity and my funeral wishes:

This Letter of Wishes does not change or revoke my Will.

I request that the following items be delivered to the individuals or charities indicated below:

Description of Item	Name of Person/Charity to Receive

My Funeral wishes are:

Signature and date

Type of Trust - Discretionary

A Discretionary Trust (Family Trust) is established by a Deed between the settlor who sets up the trust and a Trustee. In a discretionary trust, the Trustee has the power use their judgment when deciding whether any sum is to be paid to beneficiaries, and if so, how much. The heads of a family are generally appointed as a trustee company's directors; and in this way they are able to control the exercise of the trustee's discretionary powers.

Revocable/Irrevocable Trust structure

An important consideration is the issue of whether the trust should in essense be revocable or irrevocable. When electing a revocable trust, careful thought must be given to the interests of the beneficiaries under the trusts; because, the parties involved could actually deviate from the rules of established heirs outlined in the Quran, resulting in an unsupported couse of action. In summary, there are a variety of ways in which the framework of the trust can be adapted flexibly to ensure that one's wishes are carried-out; however, carefull planning will be required.

Regarding Revocable Living Trust, some Trust advocates preach against wills, declaring that Trusts are a better

instrument. Nevertheless, even if one has a Revocable Living Trust, they are required to create a will. However, in many instances, a will is all that is required. Regardless of the size of one's estate, a will should form the foundation of their estate plan. In instances where one has a Revocable Living Trust, it is ok if their will is very simple. Nevertheless, a will is still an important part of one's estate plan, and it should not be considered as being unimportant simply because a Revocable Living Trust has been created. In all fairness, something is wrong if one has a Revocable Living Trust and does not possess a will. When one has a Revocable Living Trust, they create what is referred to as a "Pour-Over Will." A Pour-Over Will acts as a safety net for one's Trust. One's Last Will and Testament will actually "tie" together the Revocable Living Trust, tax plan, and other facets of their estate plan.

In instances where one has minor children or an incompetent family member, the will in question should at least name a guardian/conservator. The purpose of a Revocable Living Trust is to allow property to be transferred through the Trust rather than through the will, thus avoiding probate. It is also important to note that some attorneys will flat out say that Revocable Living Trusts do not work and should not be used in the vast majority of the cases. The reason being, drafting a

will in the manner employed by most lawyers does not make a lot of money for them up front, but once a will is written, the testator and their heirs are psychologically "locked" into the lawyer in question. As a result, a lawyer can benefit financially because the party in question will probably do other legal work with them. Unfortunately, there are even instances in which a lawyer will take advantage of one's family during the probate process. Lawyers will also draft a great deal of wills at inexpensive prices in order to get the probate business; because, their financial success is guaranteed by the probate process.

Fundamentally a trust is formed by a token donation; such as 10,000 USD, and thereafter transferring properties etc., into the name of said trust. The donor then specifies specific beneficiaries who will become the eventual owners of the trust once it is dissolved. In this context, the donor neither intends on immediately donating their property, nor do they really wish to make the specified beneficiaries their immediate owners. From the standpoint of Islamic law, there is no problem with regard to what clauses may be written into the trust deed, provided that it does not constitute a violation of any aspect of Islamic law; i.e., involvement in interest, gambling, intoxicants, pornography, etc. **However, as it pertains to Islamic law, the**

trust in question is non-existent, and will be regarded as part of the donor's estate upon their death; despite the fact that the trust deed is a valid legal document according to South Carolina law.

The trust in question is non-existent because the intended recipients will not take actual possession until after the donor has died. The same would apply even if the donor issued the items in question as he was dying (maradul-maut); because in this instance, the transaction would be regarded as a will. In order for the transaction to be valid under Islamic law, the donor would have to issue a particular item and witness the intended recipient take actual possession prior to their demise. Thus, if a house was to be part of an Islamic trust, the owner would have to donate the house to the intended recipient, move out, hand over the keys, and sign over the title to the new owner. The new owner could then allow the former owner to remain in the house until the time of their demise. However, even though the former owner will remain in the house, it is important to note that every detail pertaining to the house will be at the new owner's discretion.

If the donor dies with the situation remaining unchanged, the donated property will transfer upon their heirs according to the laws of inheritance. The evidence for this view is a hadith

collected by Bukhari, narrated by 'Abida, who reports: **"If he dies and the gift has been set aside while the one who was given it was alive, then it is for his heirs. If it was not set aside, it is for the heirs of the one who gave it.' Al-Hasan said, 'No matter which one dies before, it is for the heirs of the one to whom it was given if it has been given to the messenger**.'" With this being said, all the donor's eventual heirs, as well as those specified as beneficiaries to the trust in question must be informed of the true reality of the trust. Therefore, it is best if the true position of the trust be documented and all the heirs and beneficiaries be required to sign the document in question, stating that they have been informed about the fact that the trust is non-existent in terms of Islamic law, and that the donor is the sole owner. Consequently, if one intends to form a trust that is valid according to Islamic law, it is imperative that they seek guidance from a scholar/expert who is experienced in this field before any trust deed is finalized. Nonetheless, whatever the situation may be, the reality of the trust must be clearly known and recorded in order to enable the executors to wind-up the estate correctly.

Below is a listing of important questions one might have regarding South Carolina's new Trust code; taken from ***Answers to 95 Questions You Should Have About the New South Carolina Trust***

Code, By Evans, Carter, Kunes & Bennett. According to the authors, "The new South Carolina Trust Code (SCTC) was passed by the South Carolina General Assembly and signed into law in 2005. It takes effect on January 1, 2006, and applies retroactively to all trusts. Modeled on the Uniform Trust Code (UTC), which was promulgated by the National Conference of Commissioners on Uniform State Laws, the SCTC was the result of the efforts of the SCTC Study Committee of the Probate, Estate Planning and Trust Section of the South Carolina Bar. For the most part, the SCTC is a default statute. The absence of case law and the absence of statutes left practitioners dealing with uncertainty in many areas of the common law. The SCTC introduces new concepts and makes significant changes to our laws on trusts. The SCTC is codified in Article 7 of Title 62 of the South Carolina Code. There are eleven sections to the Act, and it includes the official UTC comments as well as South Carolina comments. Attorneys, judges, corporate and individual trustees, and trust beneficiaries and their duties and rights will soon be guided and governed by the SCTC. Herewith are answers to 95 questions we should all have about the new law."

The questions I have included are the following based on their relevancy to the objective of this book:

Answers to 95 Questions You Should Have About the New South Carolina Trust Code

By Evans, Carter, Kunes & Bennett, PA*

1. How many states have passed a version of the UTC?

Fourteen states, including South Carolina, and the District of Columbia have done so. They are: Arkansas, Kansas, Maine, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Oregon, Tennessee, Utah, Virginia, and Wyoming.

2. When is the SCTC effective?

January 1, 2006.

3. Does the SCTC apply to existing trusts or only those created after the effective date?

SCTC Section 62-7-1106 states that, except as otherwise stated in the Act, the SCTC applies to all trusts created before, on, or after its effective date. It also applies to all judicial proceedings concerning trusts commenced on or after its effective date.

4. What and who is a settlor?

The Settlor is the SCTC's term for the creator of the trust, but the term also applies to others who add or contribute property to the trust. Thus, if A signs the trust document with the trustee but B also contributes property to the trust, both are settlors.

*** Mr. Chandler and Ms. Shuman were members of the South Carolina Trust Code Study Committee that studied and adapted the Uniform Trust Code and presented the South Carolina Trust Code to the South Carolina Bar Association. This Article was written primarily by Andrew W. Chandler, Virginia Meeks Shuman and Robert M. Kunes. Evans, Carter, Kunes & Bennett, PA Page 2**

5. Are the statutory provisions obligatory, or can the settlor craft language outside the statute?

The settlor can craft language that does not track the statute so he is free to draft his own charter, so to speak; however, there are eleven subsections in 62-7-105(b) setting forth matters that cannot be deviated from by the terms of the trust. The eleven are (1) the requirements for creating a trust; (2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust; (3) the requirement that a

trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful and possible to achieve; (4) the power of the court to modify or terminate a trust under Sections 62-7-410 through 62-7-416; (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Part 5; (6) the power of the court under Section 62-7-708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high; (7) the effect of an exculpatory term under Section 62-7-1008; (8) the rights under Sections 62-7-1010 through 62-7-1013 of a person other than a trustee or beneficiary; (9) periods of limitation for commencing a judicial proceeding; (10) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice ; and (11) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in SCTC Sections 62-7-201 and 62-7-204.

6. I hear great things about the trust laws of other states like Alaska and Delaware. Can I draft language having those statutes apply?

Under SCTC Section 62-7-107, the meaning and the effect of the terms of the trust can be designated by the settlor. Thus, as a

draftsman, you can designate Alaska law to apply. While it is not totally clear, it seems that the other substantive provisions applying to trusts in other states such as Alaska's abolition of the term limits on trusts could be incorporated into the trust. However, in the absence of designating what law applies, South Carolina law would govern trusts created in this state.

7. Who is a "qualified beneficiary" and why does it matter that I know?

A qualified beneficiary is a living beneficiary who, on the date the beneficiary's qualification, is determined:

(A) is a distributee or permissible distributee of trust income or principal; (B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date, but the termination of those interests would not cause the trust to terminate; or (C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

A beneficiary is a person that: (I) has a present or future beneficial interest in a trust, vested or contingent; (ii)

holds a power of appointment over trust property (in a capacity other than that of a trustee); or (iii) in the case of a charitable trust has the authority to enforce the terms of the Trust.

Several sections of the SCTC entitle a qualified beneficiary to notice and information to which a beneficiary is not necessarily entitled. Evans, Carter, Kunes & Bennett, PA Page 3

8. What are the "terms of the trust"?

The "terms of the trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

9. What is the trust's principal place of administration?

Under section 62-7-108, the principal place of administration is the trustee's usual place of business, unless the terms of the trust otherwise mandate a different place for administration. The trustee may change the principal place for administration by notifying qualified beneficiaries of the trustee's intent to change principal place of administration without court approval. Unless a qualified beneficiary objects within 60 days of notice, the trustee may move the principal

place of administration.

10. If a petition involving the trust has been filed in court, how does one give notice?

SCTC Section 62-7-109 states that the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given: (1) by mailing a copy thereof at least twenty days before the time set for the hearing by certified, registered, or ordinary first class mail addressed to the person being notified at the post office address given in his request for notice, if any, or at his office or place of residence, if known: (2) by delivering a copy thereof to the person being notified personally at least twenty days before the time set for the hearing; or (3) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence by publishing a copy thereof in the same manner as required by law in the case of the publication of a summons for an absent defendant in the court of common pleas.

As in the probate code, the court may for good cause provide a different method of giving notice.

11. Who is an "interested person"?

SCTC Section 62-7-0103(22) states that an "interested person" or "interested party" is any person or party deemed to be a necessary or proper party under Rule 19 of the South Carolina Rules of Civil Procedure. SCRCP Rule 19 deals with the joinder of persons needed for just adjudication and says that a person shall be joined [or, in the SCTC's case, a person shall be an interested party] if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (I) as a practical matter impair or impeded his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reasons of his claimed interest.

12. What is a nonjudicial settlement agreement, and are they allowed under the SCTC?

The SCTC provides that interested parties can enter into a nonjudicial settlement agreement i.e. one not approved by the Court for the following matters: (1) the approval of a trustee's report or accounting; (2) direction to a trustee to

perform or refrain from performing a particular administrative act or the grant to a trustee of any necessary or desirable administrative power; (3) the resignation or appointment of a trustee and the determination of a trustee's compensation; (4) Evans, Carter, Kunes & Bennett, PA Page 4 transfer of a trust's principal place of administration; and (5) liability of a trustee for an action relating to the trust.

13. What are the internal affairs of a trust?

Under SCTC Section 62-7-201, the internal affairs relate to the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to: (1) ascertain beneficiaries, determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, instruct trustees, and determine the existence or nonexistence of any immunity, power, privilege, duty, or right; (2) review and settle interim or final accounts; (3) review the propriety of employment of any person by a trustee including any attorney, auditor, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed,

and the reasonableness of the compensation determined by the trustee for his own services. Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds. The provisions of this section do not apply to the extent there is a contract providing for the compensation to be paid for the trustee's services or if the trust directs otherwise; and (4) appoint or remove a trustee.

14. What courts have jurisdiction over the internal affairs of the trust?

The probate court has exclusive original jurisdiction. However, that exclusive jurisdiction is subject to the right under SCTC Section 62-1-302(c) for a party or the court to remove the matter to a circuit court.

15. What are the external affairs of the trust?

Under SCTC Section 62-7-201, the external affairs of trusts include, but are not limited to, the following proceedings: (1) determine the existence or nonexistence of trusts created other than by will; (2) actions by or against creditors or debtors of trusts; and (3) other actions and proceedings involving trustees and third parties;

16. What courts have jurisdiction over the external affairs of

the trust?

The probate court has concurrent jurisdiction with the circuit courts over the actions and proceedings concerning the external affairs of trusts.

17. What does a trustee or a beneficiary have to do to submit to the jurisdiction of South Carolina courts?

Under SCTC Section 62-7-202, by accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

18. Who is a "beneficiary representative"?

Evans, Carter, Kunes & Bennett, PA Page 5 A "beneficiary representative" refers to a person who may represent and bind another person concerning the affairs of trusts.

19. Can a beneficiary representative bind a beneficiary?

The consent of a beneficiary representative is binding on the

person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

20. Can an agent under a power of attorney bind a principal in matters relating to a trust?

To the extent there is no conflict of interest, an agent may represent and bind the principal to the extent the agent has authority to act with respect to the particular question or dispute;

21. Can a parent bind a minor child in matters involving a trust?

To the extent there is no conflict of interest, a parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed.

22. What is virtual representation and how does it work under the SCTC?

Virtual Representation is the concept that persons having the same interests may be bound by another having the same interest; the SCTC provides that a minor, incapacitated, or unborn individual, or a person whose identity or location is

unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the beneficiary representative and the person represented and provided the interest of the person represented is adequately represented by the beneficiary representative. In other words, virtual representation lessens the number of times a guardian ad litem (GAL) would have to be appointed.

A person, who prior to the SCTC, would have needed a GAL to represent him or her can be represented by another having his or her same interests or by his or her parent, assuming in both cases that no conflict exists between the one representing and the one being represented.

23. What are the ways in which a trust can be created?

Under SCTC Section 62-7-401, a trust can be created by (1) transferring property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death; (2) a writing signed by the owner of property that the owner holds identifiable property as trustee; or (3) exercising a power of appointment in favor of a

trustee.

24. In an estate planning context, can a person create a revocable trust for herself and retain beneficial interest and serve as trustee?

Yes, a revocable inter vivos trust may be created either by declaration of trust or by a transfer of property and is not rendered invalid because the settler retains substantial control over the trust including, but not limited to, (1) a right of revocation, (2) substantial beneficial interests in the trust, or (3) the power to control investments or reinvestments.

25. What are the requirements for a valid trust?

Under SCTC Section 62-7-402, a trust is created only if: (1) the settlor has capacity to create a trust; (2) the settlor indicates an intention to create the trust; (3) the trust has a definite beneficiary or is: (A) a charitable trust; (B) a trust for the care of an animal; or (C) a trust for a noncharitable purpose; (4) the trustee has duties to perform; and (5) the same person is not the sole trustee and sole current and future

beneficiary.

26. Can the purpose of the trust be contrary to public policy?

The SCTC Section 62-7-404 says that a trust is created only to the extent that its purposes are (1) lawful and (2) possible to achieve. Although this section says that the purposes must be 'lawful' without mentioning public policy, the South Carolina comments to the section make it clear that this section is not meant to alter South Carolina's existing common law requirement that a trust purpose shall not be contrary to public policy.

27. Is a trust created in another jurisdiction valid under the SCTC?

Yes, so long as the trust complies with the laws of the jurisdiction in which the trust was executed, or the law of the jurisdiction in which, at the time of creation: (1) the settlor was domiciled, had a place of abode, or was a national; (2) a trustee was domiciled or had a place of business; or (3) any trust property was located

28. Is an oral trust valid in SC?

Yes, except that the SCTC does not recognize oral trusts for real property. In other words, a trust need not be evidenced by

a trust instrument so long as the other requirements have been met (unless the trust owns real property). However, the creation of an oral trust and its terms may be established only by clear and convincing evidence.

29. Does the SCTC provide for the creation of a trust for pets?

Yes, in contrast to existing SC law, SCTC Section 62-7-408 provides that a trust may be created to provide for the care of an animal or animals alive or in gestation during the settlor's lifetime, whether or not alive at the time the trust is created. The trust terminates upon the death of the last surviving animal.

30. Are there other new provisions relating to the creation of trusts?

In a deviation from prior law, SCTC Section 62-7-409 allows the creation of a nonchartiable trust without a definite or definitely ascertainable beneficiary. Under the SCTC, a document can allow a trustee to select the trust beneficiaries.

31. What does the SCTC provide about the creation of charitable trusts?

A charitable trust may be created for the relief of distress or

poverty, the advancement of education or religion, the promotion of health, scientific, literary, benevolent, governmental or municipal purposes, or other purposes, the achievement of which purposes is beneficial to the community.

32. Does the trustee of a charitable trust have to file a copy of the trust with the attorney Evans, Carter, Kunes & Bennett, PA Page 7 general's office?

Under 62-7-405, unless excepted by statute or rule or regulation of the attorney general, the trustees of charitable trusts in existence on the effective date of this Article, or thereafter created, under the laws of this state, shall file a certified copy of the trust instrument with the attorney general within ninety days after such date or within sixty days after the creation of the trust, whichever is later.

33. What new provisions exist with regard to modification and/or termination of trusts?

In a series of critical sections, the SCTC adds the ability to modify or terminate a nonchartiable irrevocable trust by consent with court approval (SCTC Section 62-7-411); the ability to modify or terminate because of unanticipated circumstances or change in ability to administer the trust

effectively (SCTC Section 62-7-412), the ability to modify or terminate the trust because of size and operating costs of the trust (SCTC 62-7-414); and the ability to reform to correct mistakes to conform the terms to the settlor's intentions or to achieve the settlor's tax objectives (SCTC Sections 62-7-415 and 416). And, as stated above, SCTC Section 303 permits virtual representation by fiduciaries and parents in such actions (assuming no conflict exists).

34. Who must initiate the action to modify or terminate the trust?

A proceeding to approve or disapprove a proposed modification or termination under Sections 62-7-411 through 62-7-414 may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under Section 62-7-411 may be commenced by the settlor. A settlor's agent under a power of attorney can commence a proceeding so long as the power of attorney expressly authorizes him or her to do so.

35. Who must consent to the modification or termination of a trust?

A noncharitable irrevocable trust may be modified or terminated

with court approval upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A noncharitable irrevocable trust may be terminated upon consent of all beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A nonchartiable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

36. What happens to the property upon termination of the trust under these sections?

Upon termination of a trust under 62-7-411, the trustee shall distribute the trust property as ordered by the court.

37. In what situations can the Court modify the terms of the trust and what happens to the property of the Trust?

Under 62-7-412, (a) the court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance

with the settlor's probable intention, (b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration, and ©) Upon termination of a trust under this section, the trustee shall distribute the trust property as ordered by the court. Evans, Carter, Kunes & Bennett, PA Page 8

38. At what point does the size of the trust corpus allow the trustee to terminate the trust to save fees and other costs?

After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than $100,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. While not requiring court approval, the statute contemplates possible court involvement and provides the trustee shall distribute the trust property as ordered by the court or, if the court does not specify the manner of distribution, in a manner consistent with the purposes of the trust.

39. Are there statutorily contemplated alternatives to modification of the trust terms?

In new statutory framework for SC, the court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

40. Is there specifically contemplated authority to modify to achieve tax goals that were not accurately captured in the drafting of the document?

In a provision to assist in obtaining relief, SCTC Section 62-76-416 provides the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

41. Are there any changes in how one combines or divides trusts?

Under SCTC Section 62-7-417, without court approval and whether or not the document contemplates division or combination, after notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair

rights of any beneficiary or adversely affect achievement of the purposes of the trust.

42. Are there provisions for modifying or terminating an irrevocable charitable trust?

Yes. SCTC Section 62-7-413 recognizes the doctrine of equitable deviation, which permits a court of equity to deviate from the strict terms of a trust when changed conditions render the accomplishment of the charitable purpose impossible or impracticable.

43. Is there a part of the SCTC that deals with creditors and creditor's rights?

Part 5 of the SCTC contains seven sections that deal with spendthrift trusts. Prior SC law was unclear on the effect of spendthrift provisions. The new law codifies the rights of creditors in the absence of a spendthrift provision, the concept of spendthrift trusts, the trusts to which it applies, and the exceptions which exist to the protection provided by spendthrift trust language

44. What are the general rights of a beneficiary's creditors or assignees?

provides that the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

45. What exceptions are there to these rights of creditors and assignees?

SCTC Section 62-7-501 shall not apply and a trustee shall have no liability to any creditor of a beneficiary for any distributions made to or for the benefit of the beneficiary to the extent a beneficiary's interest (1) is protected by a spendthrift provision, or (2) is a discretionary trust interest as referred to in S.C. Code §62-7-504.

46. What is required to create a spendthrift trust?

First, the spendthrift provision in the trust must restrain both voluntary and involuntary transfers by the beneficiary; second, the terms of the trust must provide that the interest of a beneficiary is held subject to a spendthrift trust or words of similar import.

47. What exceptions are there to spendthrift provisions?

Even if a trust contains a spendthrift provision, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary under section 62-7-503(b). Thus, the only beneficiary who has a right to override spendthrift provisions is a child. The UTC from which SC draftsmen began work extended rights to spouses, but SC has chosen to restrict to children only.

48. What is a discretionary trust?

While the terms of the trust ordinarily will identify the beneficiaries of the trust and identify what the trustee's obligations are regarding distributions to beneficiaries, the trustee may be given total and unfettered discretion with regard to what distributions, if any, are made to a particular beneficiary, and when such distributions are made. For example, the right of a trustee to distribute income of a trust among a class of the Settlor's issue at such time as the Trustee deems appropriate does not create a right in any one beneficiary to get income, nor does it create a right to get income at a specific time. The Trustee will not be allowed to abuse his

discretion without risk of court involvement to correct the abuse.

In contrast, more commonly, one sees trusts that direct the trustee to pay all income to a spouse quarterly. Here there is no discretion involved because the beneficiary to get the funds and the time of distribution are specifically stated. Another example would be a direction to the trustee to expend principal for the beneficiary's health. If the trustee fails to act in making distributions for the beneficiary's health, the beneficiary has a right to force the trustee to make distributions for the beneficiary's health.

49. In a trust containing spendthrift provisions and directing the trustee to expend principal for the beneficiary's health (or other ascertainable standard), can a creditor force the trustee to make distributions for health?

Subject to one exception hereinafter discussed, 62-7-504 provides a creditor of a beneficiary may not compel a distribution from a trust in which the beneficiary has a discretionary trust interest, even if: (1) the discretion is expressed in the form of a standard of distribution; or (2) the trustee has abused the discretion. Evans, Carter, Kunes &

50. If a trustee has abused his or her discretion in failing to make distributions from a discretionary trust, can a creditor force such distributions?

Subject to the one exception (child support), the trustee cannot be forced to make distributions.

51. What exception exists to force distributions from spendthrift trusts?

To the extent a trustee has not complied with a standard of distribution or has abused a discretion: a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child; and the court shall direct the trustee to pay to the child such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

52. Does the protection offered by a spendthrift provision allow me to create a spendthrift trust for myself?

No, SCTC Section 62-7-505 provides, in part, that during the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors. With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit.

53. Suppose someone else set up a trust for my benefit but named me as the trustee. The trust has a spendthrift clause. Can a creditor get to these assets?

If there is an ascertainable standard, you are safe. The statute provides, in part, that, a beneficiary who is a trustee of a trust, but who is not the settlor of the trust, cannot be treated in the same manner as the settlor of a revocable trust if the beneficiary-trustee's power to make distributions to the beneficiary-trustee is limited by an ascertainable standard related to the beneficiary-trustee's health, education, maintenance, and support.

54. How does the new SCTC describe the level of capacity to create a revocable trust? Is it the same as the capacity to make a Will?

Yes, it is the same as the capacity to make a Will. Part 6 of

the SCTC codifies many provisions relating to Revocable Trusts - with a recognition that Revocable Trusts are substitutes for Last Wills and Testaments. SCTC Section 62-7-601 provides that the capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will. The comments to the SCTC note that the test for mental capacity is whether the person knows (1) his estate, (2) the objects of his affections, and (3) to whom he wishes to give his property. The capacity to understand as opposed to actual knowledge or understanding is sufficient. It is a lower standard than that required to sign a deed or contract.

55. Is a trust presumed to be revocable or irrevocable if the document does not explicitly state?

In a change from existing law, the new SCTC provides that a trust is revocable, unless it states otherwise. However it is important to note that this status of revocability does not apply to documents executed before January 1, 2006.

56. How does one revoke or amend a revocable trust?

SCTC Section 62-7-602 provides default rules for amending and

revoking a trust (remember that the Settlor can craft language at variance from the default rules). The default rules provide that the Settlor (1) can amend or revoke by substantial compliance with a method provided in the terms of the trust; or (2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by: (A) a later will or codicil that expressly refers to the trust, manifesting clear and convincing evidence of the settlor's intent; or (B) by oral statement to the trustee if the trust was created orally; or ©) any other written method, other than a later will or codicil, delivered to the trustee and manifesting clear and convincing evidence of the settlor's intent.

57. What happens to the trust corpus when there is a revocation?

The Trustee is to distribute the property as the Settlor directs.

58. Can one delegate the ability to revoke or amend to an agent?

SCTC Section 62-7-602(e) specifically allows the ability to grant this authority to an agent either under the terms of the

trust or the terms of the power of attorney. South Carolina added to the UTC statute the proviso that prohibits changing the designation of beneficiaries. However, this provision is the default rule and, under Section 62-7-105, should be capable of being modified by language in the trust document.

59. Is the trustee at risk if she makes distributions or takes other actions without being aware of the revocation of the trust?

No, a trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

60. Do beneficiaries have any rights while a trust is revocable?

As long as the trust is revocable, the beneficiaries have no rights by default, but the settlor can create such rights in the document; however if the settlor loses capacity, then the beneficiaries have rights while the settlor is incapacitated.

61. Are there statutory provisions for contesting or challenging a revocable trust?

SCTC Section 62-7-604 prescribes a statute of limitations for contesting the validity of a revocable trust. A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of: (1) one year after the settlor's death; or (2) 60 days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

62. Once a settlor dies, is there any period of time before a trustee can distribute the corpus among the beneficiaries?

SCTC Section 62-7-604(b) provides: Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless: (1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or (2) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

63. Suppose a trustee makes a distribution that is determined to be invalid. Does a beneficiary have a duty to return the distribution?

Yes, under SCTC Section 62-7-604©), the beneficiary is under an obligation to return improperly distributed assets, but the statute does not address whether or not the beneficiary owes interest, leaving the matter to the law of restitution.

64. Are "no contest" clauses valid under the SCTC?

A provision in a revocable trust purporting to penalize any interested person for contesting the validity of the trust or instituting other proceedings relating to the trust is unenforceable if probable cause exists for instituting proceedings.

65. Suppose a beneficiary of the revocable trust dies? What happens to his gift under the terms of the trust if the settlor had not drafted language anticipating the beneficiary's demise?

SCTC Section 62-7-606 contains "anti-lapse" provisions substituting descendants of the deceased beneficiary and using rules based upon the current South Carolina Probate Code. Should a residuary gift lapse, then the other residuary

beneficiary(ies) take the share.

66. What about divorce? What effect does that have on a provision for a spouse?

SCTC Section 62-7-607 states that the spouse is deemed to revoke all dispositions in favor of the spouse, all powers of appointment granted to a spouse, and any other beneficial interests the spouse would have had. A decree of separate maintenance is not a divorce and does not affect the spouse's rights.

67. How does a designated trustee accept the trusteeship?

Under SCTC Section 62-7-701 one accepts in two ways: -- either by substantially complying with a method of acceptance provided in the terms of the trust; or (2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

68. Does the statute provide for rejections of trusteeships?

The statute specifically addresses the right to reject trusteeships, but notes that one can act to preserve trust

property without accepting a trusteeship.

69. Are bonds now required of trustees under the new code?

SCTC Section 62-7-702 states that bonds are not required if the agreement so states, but if the document is silent, a beneficiary can request the court to direct the Trustee to secure a bond.

70. If more than two trustees are appointed, what rules govern their actions?

If co-trustees cannot reach unanimity, then a majority of the co trustees may act. Generally, each co trustee is required to participate in all matters involving the Trust, subject to an ability to delegate responsibilities to another co-trustee.

71. Suppose one of three co-trustees objects to a course of action selected by the other two cotrustees. What liability does the third trustee have?

Under SCTC Section 62-7-703, a dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any co-trustee of the dissent at or before the time of the action is not liable for the action unless the

action is a serious breach of trust.

72. If there is a serious breach of trust about to occur or has occurred, what is a dissenting cotrustee to do?

Under SCTC Section 62-7-703, such a co-trustee should ask a court to intervene to prevent a co-trustee from committing a serious breach of trust. If a serious breach has occurred, then the co-trustee must ask a court to intervene to compel a co-trustee to redress a serious breach of trust.

73. If one of two co-trustees is unable to act, what action can the other co-trustee take?

Under SCTC Section 62-7-703(d), if a co-trustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining co-trustee or a majority of the remaining co-trustees may act for the trust.

74. If a vacancy occurs in a co-trusteeship, must the vacancy be filled?

If the terms of the document require there to be a fixed number of co-trustees, then the vacancy must be filled, but otherwise

the remaining trustee(s) serve without the necessity of appointing a substitute to fill the vacancy.

75. In the absence of specific language in the trust document, how does a trustee resign?

Under SCTC Section 62-7-705 a trustee may resign: (1) upon at least 30 days notice in writing to the qualified beneficiaries, the settlor, if living, and all co-trustees; or (2) with the approval of the court.

76. Is there an overriding reasonableness requirement for trustee fees?

Yes. If the terms of payment are set forth in the document, a court can allow more or less compensation if: (I) the duties of the trustee are substantially different from those contemplated when the trust was created; or (ii) the compensation specified by the terms of the trust would be unreasonably low or high.

77. Are the trustee's duties of good faith, loyalty, impartiality, etc. codified?

Yes, in Part 8 of the SCTC. In SCTC Section 62-7-810, trustees are required to keep adequate trust records and to identify and

to not co-mingle trust assets with other assets.

78. What trust information must a trustee disclose to a beneficiary? Can a document expressly provide for nondisclosure of that information?

SCTC Section 62-7-813 states that a trustee has a general duty to keep the 'qualified beneficiaries' reasonably informed about the administration of the trust and of the material facts necessary to protect their respective interests and a duty to promptly respond to a beneficiary's request for information related to the administration of the trust. Unless the document states otherwise, a trustee must provide all qualified beneficiaries with the trustee's name, address, and telephone number within sixty days of accepting the trusteeship. Within sixty days of the date the trustee has knowledge that the trust has become irrevocable, a trustee must also inform all qualified beneficiaries of the following: (I) that a trust exists; (ii) the settlor's identity; (iii) that the qualified beneficiary has a right to request a copy of the trust, and (iv) that the qualified beneficiary has a right to an accounting. Unless the document states otherwise, a trustee must provide all beneficiaries who request a copy of the trust, a copy of the trust. Again, this is a default statute and a

settlor could specifically provide that the trustee is not required to comply with this Section. The Section also give a beneficiary a right to waive his or her right to this information.

79. Do the duties set forth in SCTC Section 62-7-813 apply retroactively?

This Section applies to any trustee who agrees and accepts to serve as trustee of any irrevocable Trust on or after January 1, 2006, and to any trustee of any revocable trust that becomes irrevocable on or after January 1, 2006.

80. What statutory powers does a trustee have?

SCTC Sections 62-7-815 and 816 set forth the general and specific statutory powers of a trustee. The first section states that a trustee has the same powers over trust property that an individual has over his property. The second section is the laundry list.

81. How can a trustee protect itself upon termination of a trust?

SCTC Section 62-7-817 provides that a trustee may provide the beneficiaries with a proposal for distribution, giving any

beneficiary the right to object within thirty days of the date of the mailing and informing the beneficiary of that right and of the time allowed for objection.

82. Where can I find the South Carolina Uniform Principal and Income Act?

It is Part 9 of the SCTC.

83. What is a breach of trust?

A breach of trust is any violation of a duty owed to a beneficiary by a trustee.

84. What remedies does the SCTC provide for breach of trust?

Under SCTC Section 62-3-1001 the court may: (1) compel the trustee to perform the trustee's duties; (2) enjoin the trustee from committing a breach of trust; (3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means; (4)order a trustee to account; (5) appoint a special fiduciary to take possession of the trust property and administer the trust; (6)suspend the trustee; (7)remove the trustee as provided in Section 62-7-706; (8)reduce or deny compensation to the trustee; (9) subject to Section 62-7-1012,

void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or (10) order any other appropriate relief.

85. What is the measure of damages for a breach of trust?

Under 62-7-1002, a trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of: (1) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or (2) the profit the trustee made by reason of the breach.

86. Are there ever damages recoverable against a trustee in the absence of a breach?

A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

87. Is a beneficiary's release of a trustee from liability for breach of trust valid?

Yes unless the release was induced by the trustee's improper conduct or unless the beneficiary was unaware of the

beneficiary's rights or of the material facts relating to the breach when the release was signed.

88. What is the American rule regarding payment of attorneys fees? Is it affected by the SC TC?

The American rule traditionally has required each party to pay its own costs. However, SCTC Section 62-7-1004 provides that in a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

89. What are applicable statutes of limitations in actions against a trustee?

While there can always be a prior adjudication, a consent or agreed upon limitation, a beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.

90. If there was no report sent, when does the statute of

limitations run?

A judicial proceeding by a beneficiary or on behalf of a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of: (1) the removal, resignation, or death of the trustee; (2) the termination of the beneficiary's interest in the trust; or (3) the termination of the trust.

91. Can a trustee be absolved from liability by the terms of the document?

Generally yes, but such terms are unenforceable if the exculpations relate to breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or if the exculpatory language was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

92. What personal liability does a trustee have in administering a trust?

Only for torts committed in the course of administering a trust, or for obligations arising from ownership or control of

trust property, including liability for violation of environmental law, but only if the trustee is personally at fault. Otherwise the trustee is not personally liable, unless provided in a contract signed by the trustee.

93. What is the liability of the settlor of a revocable trust if the trustee is a general partner?

The settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

94. What is a certification of trust and what effect does a certification have?

As an alternative to furnishing a copy of the trust, the trustee may furnish a certificate for the trust. The statute in 62-7-1013 sets forth all of the items that must be contained in such a certificate, and in fact, contains an acceptable form of certification.

95. What was repealed by the SCTC?

South Carolina Code Sections 62-7-101 through 62-7-709 and Section 27-5-70 were repealed; provided, however, that South Carolina's version of the Uniform Prudent Investor Act, which

was Section 62-7-302, is now at SCTC 62-7-933 and South Carolina's version of the Uniform Principal and Income Act, which were Sections 62-7-401 through 432, is now SCTC Sections 62-7-901 through 932.

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http://www.eckb.com/helpful-mnu/46-answersto95questionsyoushouldhaveaboutthenewsouthcarolinatrustcode

INSURANCE AND PENSION:

If one's insurance or pension policy is written in a trust of nominated beneficiaries, upon one's death, these items will pass outside of one's Islamic will directly to one's designated beneficiaries. All insurance/pension policies will pass outside of one's Islamic will; because, these items are not regarded as one's wealth due to the fact that they will not be in one's possession at the time of their death. However, in the case of a pension, since this item is accrued from years of service, in principle, the retirement pension scheme constitutes Mudaraba (The first party, the rabb al-mal, contributes the capital to the mudaraba and does not get involved in its management, while the second party, the mudarib, brings no funds but only his expertise and entrepreneurial skills to manage the mudaraba.),

so the proceeds from said transaction will become the right of all the legal heirs. Furthermore, even if one dies before obtaining their pension, the value of said item must be included in their estate.

According to a June 30, 2003 article in Arab News Islam, "Pension plans are generally acceptable. They work on practically the same basis as life insurance, with some differences. Pension plans are operated by most, if not all, Muslim countries. They are also applicable to Al-Azhar and other Islamic universities. Normally pension plans provide support to a retired employee, his wife, and children below a certain age. The idea is that after that age, which is normally 21, children should be able to support themselves. Pension is a benefit given to those who are at a stage of life when they cannot support themselves. This is why it is paid to a retired employee and his wife, or spouse. It is not part of a person's savings, unless the plan specifies that. As such, it is not treated as part of one's estate, which is divided according to the law of inheritance."

It should also be noted that any insurance policy that is "required" for a South Carolina resident or employee is lawful according to Islamic law. On the contrary, Life insurance policies are unlawful if not required by State law or a

workplace agreement. However, for those Muslims who engage in such policies, upon their death, the funds from said policies pass directly to the beneficiary named within the document. One cannot inherit funds from their own Life insurance policy; as a result, one's spouse is generally the primary beneficiary of the policy.

One can also utilize a Letter of Wishes to change the way that an asset is held so that it pays directly into their estate; such as, changing one's pension fund from directly paying their beneficiaries to paying into their estate. Basically, one can include a Letter of Wishes for each asset that passes outside of their will. This Letter will be addressed to the beneficiary of that asset. It must be signed and dated by the Testator and can be either written or type. It does not require witness signatures. Unlike the will, the Letter of Wishes does not become a publicly available document upon death and therefore should be kept with one's Last Will and Testament.

The Letter of Wishes can also request that a particular beneficiary include their share of the asset as part of the testator's estate. This ensures that the asset to be distributed will be done so according to Islamic law. This fact is evident from **SECTION 62-2-512 of South Carolina Code of Laws pertaining to: Separate writing identifying bequest of tangible property,**

which maintains: "A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title (as defined in Section 36-1-201(15); i.e., Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.), securities (as defined in Section 36-8-102(1)(A)), and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the

dispositions made by the will." However, it is important to note that **a Letter of Wishes is not legally binding on one's beneficiaries; i.e., after one's demise, there is no way to guarantee that their heirs will comply with the agreement.** Nevertheless, as a backup plan, a testator can have their executor reiterate to the beneficiaries in question the importance of fearing Allah and honoring the testator's final wishes. With this being said, as detailed on the ISLAMTOMORROW.com document: Last Will and Testament - Important Notes - Point #6 - Case of more than one wife, every Muslim male writing a will should reflect upon the following point of the document which reads: "Although I believe that the legal ban in America and other Western countries on marrying more than one wife is wrong and instead, I call for regulating plural marriage, in a way that is consistent with Shari'ah, I do not condone any violation of the law of the land. But since there are a few Muslim men who have more than one wife without registering the second marriage or both marriages, I feel a need to protect the rights of unregistered wives in the estate. In such a case I suggest personalizing the Last Will and mentioning the names of the wives, registered or not, along with a statement that requires the distribution of any **share of a wife in the Schedule of Mawarith equally between the surviving wives.**"

SAMPLE LETTER OF WISHES

To: My Executors, My Family and My Beneficiaries and Any Other Person Whom It May Concern:

I, (name), of (address), wish to state my wishes with respect to certain items of sentimental value, my gifts to charity and my funeral wishes:

This Letter of Wishes does not change or revoke my Will.

I request that the following items be delivered to the individuals or charities indicated below:

Description of Item	Name of Person/Charity to Receive

My Funeral wishes are:

Signature and date